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MAY 25 2006

OFFICE OF PETITIONS

In re Application of	:	
Chacon	:	
U.S. Patent No.: 7,020,594	:	
Issue Date: March 28, 2006	:	
Application No. 08/941,832	:	Decision on Petition for
Filing Date: October 1, 1997	:	Patent Term Extension
Attorney Docket No.: B99-084	:	
For: Electronic Kanban Worksheet For the	:	
Design and Implementation of Virtual or	:	
Electronic Kanban Systems	:	

The above-identified application has been forwarded to the undersigned for consideration on a petition for patent term extension entitled "Petition Under 37 CFR 1.181 to request Patent Term Extension Under 37 CFR 1.701," received on March 23, 2006.

The petition is granted-in-part.

Petitioner notes that the Notice of Allowance dated October 3, 2005, in the above-identified application incorrectly stated that the patent term extension is 0 days. Petitioner states that applicant is entitled to 1,593 days of patent term extension, not the 0 days of extension as stated in the Notice of Allowance.

Petitioner notes that the above-identified application was filed on October 1, 1997, a Notice of Appeal was filed on April 2, 2001, a first remand by the Board was mailed on April 25, 2003, a second remand by the Board was mailed on January 29, 2004 and final decision by the Board, reversing the adverse determination of patentability was made on August 11, 2005. The application was allowed on October 3, 2005, but the Determination of Patent Term Extension under 35 U.S.C. 154(b) included with the Notice of Allowance in the above-identified application states that the patent term extension is zero (0) days. Petitioner asserts that patent term extension in this application is inappropriate and that the patent term should be extended by 1,593 days for the period from April 2, 2001, the date of the Notice of Appeal to August 11, 2005, the date of the last remand by the Board.

35 U.S.C. § 154(b) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000, and, as amended by

the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113, for those delays and others in applications filed on or after May 29, 2000

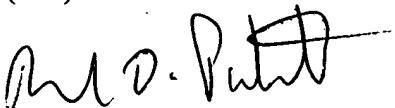
A Notice of Appeal was filed in the above-identified application on April 2, 2001. On January 29, 2004, the Board of Appeals and Interferences remanded the application to the examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a remand by a panel of the BPAI to the Examiner, the patent to issue from the application is entitled to an extension of the patent term.² The period of delay in the above-identified application is the period beginning on April 2, 2001, the date that the Notice of Appeal was filed and ending on January 29, 2004, the date of the remand by a panel of the BPAI, which is a final decision in favor of the applicant. Three years after the earliest effective filing date of the application is October 1, 2000. Accordingly, the period of extension is not required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the first period of extension is 1,033-days, the period from April 2, 2001 to January 29, 2004, including the beginning and end dates.

While Petitioner argues that the extension should be calculated until the August 11, 2005, that remand was not by a panel of the BPAI. According to 37 CFR 1.701(a)(3), a patent is entitled to patent term extension if an application is remanded by a panel of the Board of Patent Appeals and Interferences and the remand is the last action by a panel of the Board of Patent Appeals and Interferences prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application.

The Office will issue a certificate of correction in order to rectify the error regarding the patent term extension information. See 35 U.S.C. 254 and 37 CFR 1.322. Patentee is given THIRTY (30) DAYS to respond to this letter. If no objection is received from patentee, the Office will issue a certificate of correction indicating that the patent term is extended for 1,033 days under 35 U.S.C. 154(b). This time limit is NOT extendible under 37 CFR 1.136.

Petitioner's deposit account has not been charged a petition fee.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

²Revision of Patent Term Extension and Patent Term Adjustment Provisions, 78 FR 21704, 21705 (April 22, 2004), 1282 Off. Gaz. Pat. Office Notices 100 (May 18, 2004) (final rule).